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The above-styled cause continued to be heard at 10:05 a.m. on February 14, 2019, before the Honorable Eli J. Richardson, District Judge, when the following proceedings were had, to-wit:

(Beginning of requested excerpt of closing arguments in the above-named case given on February 14, 2019.)

MS. RISINGER: Thank you, Your Honor, counsel.
May I have the screen, please?

"I am going to teach you everything I know about sex; and by the end of the summer, you are going to know more than your mom and your dad."

Those are the words that the Defendant, James Frei, said to 15-year-old Taylor, and he said it within days of messaging her on Facebook and before ever having met her.

Now, his intent, from the very first message, was crystal clear. This was about sex, pure and simple. It was about sex with 15-year-old Taylor. But he wasn't just going to have it; he was going to film it. He was going to photograph it. He was going to memorialize it with his cell phone. This is not a case of two teenagers in love. This is not a case of an adult consensual relationship.

1 There were no trips to the movies, to the Disney movies that
2 15-year-old Taylor loved. There were no fancy dinners at a
3 restaurant in downtown Nashville. There was no courting
4 phase. This relationship was pure manipulation by the
5 Defendant, and it was that manipulative relationship through
6 which he committed the eight crimes he is charged with.

7 Let's talk about those eight crimes and what they
8 are. Counts 1 through 4 charged the Defendant with
9 production of child pornography on four different dates: May
10 11th, May 17th, June 3rd, and June 5th. And what that means
11 is the Defendant used or enticed a minor to engage in sexual
12 activity for the purpose of producing an image and that the
13 visual depiction or the image was produced using materials
14 that had been shipped, mailed, or traveled, transported,
15 imported for interstate commerce.

16 So what does that mean in the context of this
17 case, why we're here today? What it means is that the
18 Government had to prove -- and we did prove -- that the
19 Defendant, James Frei, used or enticed 15- or 16-year-old
20 Taylor to engage in sex and he produced images of it -- he
21 produced those photos and those videos -- and that the photos
22 and videos were produced using the Defendant's cell phone.
23 Because as you heard in the stipulation, that cell phone was
24 manufactured in China. So that cell phone was manufactured
25 with materials that had been shipped or transported in

1 interstate commerce. So the images and videos on that
2 cell phone meet that requirement.

3 But that stipulation isn't the only evidence of
4 that. You also have the Defendant's transportation of that
5 cell phone back and forth multiple times between here and
6 North Carolina. That's also transporting in interstate
7 commerce.

8 Count 5. This is sometimes referred to as online
9 enticement of a minor or persuading a minor to engage in
10 unlawful sexual activity.

11 Let me say one thing before I go a little further.
12 The elements of each of these offenses, sometimes they'll say
13 "illicit sexual activity" or "sexually explicit activity" or
14 "unlawful sexual activity," and each of the charges you would
15 get from the Judge will further define each of those terms.

16 But let me be very clear: The sex in this case
17 with a 15-year-old from May 8th up until May 30th and then
18 from May 30th through June 5th with a 16-year-old, it
19 satisfies every definition of whether it's unlawful, sexually
20 explicit, however the charge says it.

21 So what did the Government have to prove to show
22 that he is guilty of Count 5? We have to prove that he
23 enticed, induced, or persuaded an individual under the 18 --
24 age of 18 to engage in unlawful sexual activity, that he did
25 so using a means or facility of interstate commerce, and that

1 the Defendant knew the individual was under 18.

2 So again, in the context of this case, to simplify
3 it, what's that mean? It means the Defendant, James Frei,
4 persuaded, induced, or enticed 15-, 16-year-old Taylor to
5 engage in sex, that he used his cell phone or the Internet to
6 entice and induce her. That will be in the instructions: a
7 cell phone and the Internet or facilities of interstate
8 commerce. And through the Internet in this case, that's
9 Facebook. And third, that he knew -- which he did -- that
10 Taylor was underage, that she was 15 or 16.

11 Counts 6 and 7, traveling with the intent to
12 engage in sexual activity. What that means is that when the
13 Defendant traveled from North Carolina -- well, let me stop.
14 What that means is that the Defendant had to travel in
15 interstate commerce on or about the dates alleged in those
16 counts, and that he did so with the intent to engage in
17 sexual conduct.

18 So in the context of this case, that means James
19 Frei traveled from another state -- North Carolina or
20 anywhere else outside of Tennessee -- to Tennessee on or
21 around the dates alleged, and that when he did so, when he
22 traveled, he intended to have sex with 15- or 16-year-old
23 Taylor.

24 And the last count -- there's no Count 8., so just
25 to not confuse you when you get back there, there's no

1 Count 8.

2 The last count, Count 9, is transporting child
3 pornography, and that is that the Defendant knowingly
4 transported in interstate commerce items or items of child
5 pornography, and that when he transported those items, he
6 believed that they were child pornography.

7 In the context of this case, James Frei knowingly
8 transported the images and videos he took of 15-, 16-year-old
9 Taylor across state lines and that when he transported those
10 photos, he believed them to be child pornography. He knew
11 them to be child pornography.

12 From the moment James Frei met Taylor on Facebook,
13 he began grooming her. You heard her testify at the time,
14 she was an inexperienced and impressionable young girl, and
15 at that particular time in May 2016, she was especially
16 vulnerable. And she was vulnerable because the people she
17 thought were her friends, her high school friends, were
18 bullying her. And they were doing it because she has, of all
19 things, diabetes, and would have to miss school.

20 So her friends were making fun of her, and she
21 became withdrawn, she became depressed. And so what did she
22 do? Well, she tried to rectify the situation. She picked
23 herself up, and she thought, "I'll join a Facebook group for
24 teens. And maybe through that group, I'll find some friends.
25 I'll find some friends that won't bully me because of my

1 medical condition."

2 And it was through that group, that Facebook teen
3 group, that the Defendant, 47-year-old James Frei, found
4 Taylor and began preying on her. And from that moment on,
5 from the very first message on May 3rd, 2016, he began
6 setting the stage. He complimented her, called her sexy.
7 That was the very first message. Told her she looked cute,
8 that he loved her smile.

9 When he was saying those things, there's no doubt
10 that he knew her age, because in the first message she sent
11 him, she told him she was 15, almost 16. Well, let's just
12 say he forgot that message. Well, that wasn't the only time
13 they talked about it. In fact, when she sent him a photo of
14 her in a blue dress and said it was from Easter of the year,
15 he had the audacity to say, "You don't look 15 in that photo.
16 You actually look 13 or 14. But hey, I mean that in a good
17 way. That's a good thing. Because I don't care if you were
18 13 or 14."

19 That's what the Defendant said to Taylor.

20 Now, he asked her for pictures, and he did that
21 pretty quickly. And at first he eased into it, right? He
22 asked her for some pictures of her dressed. But then he
23 escalated it. He started asking, "Wish you could send a bra
24 and panty pic."

25 Well, what he really wanted, what he really loved,

1 were nudes. Would she send a nude pic? "Could we do some
2 cam to cam at night?" And when she said she didn't have
3 those pics and she didn't have the camera, he said, "Well,
4 that's okay. Can I take pics tomorrow?"

5 He suggested visiting her. That was his
6 suggestion, to travel to Nashville from North Carolina. But
7 he knew he had to plan how to do this. He couldn't just show
8 up at her apartment one day when her dad was home and her
9 12-year-old brother was playing Xbox or whatever 12-year-olds
10 do. So he had to plan. And he started doing that with her.
11 "What time will your dad be home? Is your dad gone?"

12 And then that went to, "Do you have a building?
13 Do you have a big backyard? Do you have a building in your
14 backyard?"

15 I mean, I guess the Defendant was planning to take
16 15-year-old Taylor, a virgin, and bang her in the toolshed
17 next to a lawn mower if he could. But she lived in an
18 apartment, so that wasn't going to work.

19 So what about a park? Maybe a park. And he
20 thought, "Well, there might be a few too many people, but
21 maybe a park would work."

22 And finally the Defendant had an idea. What about
23 a friend? What about a friend? "Do you have a friend who
24 would cover for you, a friend who you can say you were going
25 to spend the night with when in reality, you come and stay

1 with me at a hotel?"

2 Planning how to sneak around and how not to get
3 caught, that is manipulation at its best. That is conniving.
4 That is evidence of the Defendant's intent to travel and
5 engage in sex with 15-year-old Taylor when he got here.

6 He asked her personal questions. He asked her
7 about her period. He asked her if she masturbated, asked her
8 if she wanted him to masturbate. And then -- and then he
9 sent incredibly graphic messages to a 15-year-old girl about
10 everything he wanted to do to her.

11 Now he started -- he started soft. He said, you
12 know, "I believe a woman's first time should be made love
13 to." I guess in that toolshed or the park.

14 Then it escalated. It escalated quickly. And you
15 can see it on the screen. You heard it yesterday. I'm not
16 going to go through those messages again. We went through a
17 select few of the approximately 2,000 messages, maybe 150 of
18 them, in detail yesterday. And I suspect that you've seen
19 and heard enough of those messages so I'm not going to do
20 that here today in court.

21 But if I'm wrong, if I'm wrong and one of you gets
22 back to the jury and you think, "You know what? The
23 Government only showed us 150 messages. Maybe somehow the
24 other 1,850 messages would make a difference," they're not
25 different, but they're in evidence. So if you're wondering

1 about that, go back, look at them. That's Government's
2 Exhibit 6B. It is 300-plus pages of messages between the
3 Defendant and 15-year-old Taylor. It is a play-by-play book
4 on how to entice and induce a kid into engaging in sex. Go
5 look at it.

6 So May 8th comes around. Five days, about 700
7 messages in, and the Defendant travels to Nashville. And on
8 May 8th at 6:10 a.m. -- you can see it in the chats, in the
9 summary chart, Government's Exhibit 6A; or in the underlying
10 chats, 6B, you can see it. At 6:10, he's at her apartment.

11 But it's not just in the chats, in case you were
12 worried those may be wrong. You can look at his bank
13 statement. You might have been asking yourself why
14 Mr. Oliver was testifying at trial. Mr. Oliver was talking
15 about the bank statements, pointing out the dates that the
16 Defendant was making transactions with his bank card in
17 Nashville.

18 So after the Defendant, James Frei, traveled five
19 or six hours through the dark of night from North Carolina to
20 Nashville, he arrived in Nashville with the hopes of engaging
21 in a carnival of sex. He wanted a little bit of everything:
22 a little vaginal, a little oral, and a little anal. But he
23 just didn't want it. He wanted to film it, he wanted to
24 photograph it, he wanted to document it. He used Taylor,
25 15-year-old Taylor, to engage in sex for the purpose of

1 producing those photos and videos.

2 And on May 8th, he took six photos and three
3 videos. And yesterday we didn't go through every single
4 photo of Taylor on his phone in a sexually provocative
5 position. We didn't watch the videos in full. We saw a few
6 seconds, we looked at a few photos: six photos, three videos
7 from that first trip. The best part of those videos that we
8 watched on that TV screen in court yesterday, though, was
9 that one video from May 8th where the Defendant's camera, his
10 phone camera, panned right past his face as he went to focus
11 on Taylor and what she was doing. The Defendant took those
12 videos.

13 When he was done with her, dropped her off, headed
14 back to North Carolina. Wasn't the end of it, though. Did
15 not stop there.

16 On May 9th, as soon as he gets back to
17 North Carolina, he starts it up again. He's doing that
18 grooming process. But now we've engaged in all types of
19 things, so maybe we'll suggest something a little different.
20 Maybe he'll buy her a dog collar. Maybe he'll walk her
21 around on a leash. Sure, why not. Why not throw that out
22 there, a little S and M, a little dominance, submissive, some
23 bondage. Why not, Taylor? She's 15.

24 She doesn't even know what that means. She told
25 you that. Half these messages she received, she went with

1 it. Her responses are, okay, yeah, smiley face. She doesn't
2 say, "Yeah, I'd love to get on all fours and you drag me
3 around in a store by a leash and a dog collar." That's not
4 her response. She doesn't even understand these things.

5 But the Defendant can't get there for another nine
6 days. So what's he do to tide himself over in the meantime?
7 In addition to messaging her, he watches those videos, those
8 videos from May 8th. We know he watched those videos at
9 least three times because we have screenshots on them. We
10 have one screenshot from May 11th and two screenshots from
11 May 16th. And Detective Gish told you when he was watching
12 those videos, he hit a combination of buttons and he took a
13 screenshot. He must have really liked what was happening in
14 the video at that particular moment with that particular
15 image upon his phone.

16 Comes over next time on May 17th. Again, under
17 the cloak of darkness, he travels from North Carolina to
18 Nashville, Tennessee. Gets there just a little after
19 midnight, but he doesn't see her right after midnight. It's
20 really not possible. Her dad's home overnight but he leaves
21 early because he's a manager at a gas station.

22 So he's at her door at 5:13 a.m. But again, you
23 don't have to believe. Just the chats. Look at his bank
24 records. Look at those transactions that occurred in
25 Nashville.

1 And on May 8th -- I'm sorry -- May 17th, as soon
2 as he got to her apartment at 5:13 a.m., he again engaged in
3 sexual activity with her and he filmed it. What was Taylor
4 wearing? She was wearing her purple nightgown with
5 butterflies, the nightgown of a 15-year-old kid. That's what
6 she had on in that video. Not what the Defendant wanted her
7 to wear, not the kind of outfit the Defendant sent her a
8 picture of asking if she'd like that. And then in the chats
9 he clarified, well, did she like blond hair or did she like
10 the girl? That's what he said to 15-year-old Taylor when he
11 sent her that photo.

12 Now, after May 17th, just a few more trips
13 scattered in there. Taylor says she does not recall a trip
14 where they didn't have sex. But I want to fast-forward to
15 her birthday weekend. She turned 16 on May 30th. And on
16 June 3rd through June 6th, that was her birthday weekend.
17 She was going to be having a party. And the Defendant --
18 although 16, she's still a minor, she's still
19 impressionable -- Defendant travels, once again, to
20 Nashville.

21 But this time, he gets a hotel, and he's going to
22 stay until Monday morning, stay at least three days. And on
23 June 3rd, he arrives. He eventually comes and picks her up
24 from her apartment and he takes her back to his hotel, and he
25 takes ten photographs of Taylor in sexually provocative

1 positions standing in the bathroom area of his hotel room.

2 And we looked at one of those images. We looked
3 at the image, 7E-21, that's cropped on the screen for you
4 here. There was more to that image. Go back and look at it.
5 But it's the Defendant and Taylor naked, and the Defendant's
6 holding that cell phone, that LG L33L, and he's taking a
7 selfie of the two of them in the mirror.

8 Fast-forward two days to June 5th. Taylor goes
9 back to his hotel, and it's on that occasion that he takes
10 four of the most up close and personal images of her: one
11 photo and three bursts, up close and personal, of her vagina.
12 She told you she didn't remember him specifically taking
13 those photos but that she looked at them prior to coming into
14 court, and she believed those to be photos of her. And they
15 even had the mole that 15-year-old -- well, at that time
16 16-year-old Taylor had at the top of her leg. Fits with the
17 timeline. When those photos were taken on her phone, he was
18 in Nashville at the Motel 6.

19 Now, thanks to Facebook and their cyber tip, those
20 were the last photos that the Defendant was able to produce
21 of 15-, 16-year-old Taylor.

22 You might have been asking yourself during this
23 trial how in the world a 15-year-old fell prey to the
24 Defendant. She's going through a rough time and she thought
25 he cared about her. So to her, this relationship, if you

1 want to call it that, as odd as it may be to any of us
2 sitting in this courtroom, it filled a void for her. But to
3 him, to the Defendant, James Frei, it was all about his
4 master plan to turn Taylor into what he needed her to be to
5 satisfy his sexual desires. Sex that she was too young to
6 legally consent to.

7 He complimented her, told her he loved her, he
8 told her he missed her. And he introduced her -- he told her
9 he would buy her things. And he introduced her to a
10 *50 Shades of Grey* kind of world, a world that Taylor did not
11 fully comprehend and a world that she likely didn't even know
12 existed on May 3rd, 2016, when she responded to his first
13 message: "Oh, my God. So sexy. How old?"

14 He is guilty. Find him guilty. Thank you.

15 THE COURT: Thank you, Ms. Risinger.

16 Mr. Buckholts?

17 MR. BUCKHOLTS: Good morning, ladies and gentlemen
18 of the jury. Thank you for your service and listening to
19 this case. Mr. Frei thanks you for listening to this case.

20 I wanted first to go back and talk about at the
21 very beginning of the trial. We talked about the elements of
22 each and every count, the burden of the Government to prove
23 each and every count beyond a reasonable doubt.

24 Now, the Judge is going to instruct you on what
25 the law is. He's going to give you that instruction in just

1 a little bit. I ask that you pay careful attention to the
2 instructions that you receive and all of the instructions in
3 full, that you don't gloss over anything, that you go back
4 and you look at each and every element, you consider the
5 evidence that you've heard in this case, and you consider
6 everything before you reach a verdict.

7 I want to start out, I'm going to talk about,
8 really, two main things in this case. I want to talk about
9 the relationship with Mr. Frei, between Mr. Frei and
10 Ms. Bushong and how the Government's characterized it. And
11 then I want to talk about, after that, I'm going to go
12 through the elements of Counts 1 through 4 very carefully
13 with each and every one of you. I'm going to talk about
14 that.

15 Now, the Government has portrayed this
16 relationship as -- in a different way, as Taylor Bushong
17 being impressionable. I think all 15-year-olds, 15-,
18 16-year-olds, that's true to a certain extent. But they
19 portrayed it almost as if she was drug in kicking and
20 screaming into this action.

21 If you look at the first couple of pages of the
22 government's exhibit -- when you're going to go back, you'll
23 have the Facebook messages -- this was pretty much, right
24 from the start, an agreement to engage in a sexual
25 relationship from the beginning. That doesn't make it right,

1 it doesn't make it good. There are elements of other counts
2 in this indictment that address those things. But to -- I'm
3 not going to get an opportunity to talk to you again, so I'm
4 going to make sure I go through some of these things as to
5 the relationship aspect of it.

6 One of the things about this, the Government
7 mentioned the pure volume of these Facebook chats, and there
8 are a lot. There are a bunch of them. If you go through
9 those, there are going to be hearts back and forth to each
10 other. There was -- as they get later in time, there is more
11 expressions between the two of them of affection. There are
12 discussions of gifts.

13 There was some testimony Ms. Bushong couldn't
14 remember, had to be reminded on certain things, said she
15 had -- what I recall what she said at first was that she
16 thought every trip was -- there was sexual activity, and then
17 she couldn't remember.

18 Some of those things, I think you have to use your
19 common sense and reason to determine, you know, would you
20 remember that or not? Would you remember whether you had a
21 sexual encounter or not? I know it's been two years, but
22 that's a pretty significant event in somebody's life, and so
23 I don't believe it's entirely accurate.

24 And if you look at the context of the Facebook
25 messages, for anybody to say that there wasn't some affection

1 between both Ms. Bushong and Mr. Frei, obviously, there's a
2 difference in the two parties as to influence and
3 impressionability. But to characterize it, Ms. Bushong is
4 just being so reluctant that she was almost forced into this
5 relationship, I know that the Government didn't go that far,
6 but it went pretty far to say that she was -- she was very
7 willing, you can tell, from the Facebook chats right away.

8 So that gets us into Counts 1 through 4, and I
9 posted those up there for you. Hopefully they're big enough.
10 You're going to get these again back when you're able to go.
11 The Judge is going to instruct you, but I want to walk
12 through those things with you.

13 You've got the four counts with the four dates.
14 You've got the May 8th, the May 17, the June 3rd, and the
15 June 6th events. And if you look at count -- at the count,
16 you've got A and B; you've got a first and a second there.
17 Now, the second element there is not in dispute. Whether the
18 visual depictions -- you've seen evidence of visual
19 depictions. There's no question about that. They traveled
20 across state lines. You've heard testimony about that.
21 There's no dispute on that.

22 But what there is a dispute is, is that the
23 Defendant employed, used, persuaded, induced, enticed, or
24 coerced Taylor Bushong to engage in sexually explicit
25 conduct. And I bolded for the purpose of producing a visual

1 depiction.

2 Now, the Government would have you believe that
3 you have to find, well, they had sex and there was a video
4 created, so it must have been for the purpose of creating the
5 video. That must have been the purpose of the sexual act.

6 Ladies and gentlemen, I would contend to you that
7 the sexual acts were for the purposes of having sex. This
8 was not a situation where you had, you know, a camera crew
9 and you had a hidden camera somewhere and where a Defendant
10 may have taken photographs or videos or had something hidden.
11 This was out in the open with knowledge as far as the -- as
12 far as the photographs. So those would suggest that the
13 sexual relationship wasn't for the purpose of the
14 photographs.

15 Now, let me give you some -- you need to use your
16 common sense and reason when you go back in the deliberation
17 room. When you go back there -- and I'm going to give you
18 some examples of how to think about photographs and events
19 where you take photographs. Now, some of you may have family
20 members that play in sports. Some of you may have played
21 sports. And you had a sporting event, maybe it was a
22 football game, and maybe you asked somebody to come out there
23 and take the photographs of your football game or your
24 basketball or whatever sporting event it is. And so they
25 took pictures.

1 Now, the purpose of the photograph, as the
2 Government said, would be to memorialize the event. But it
3 wouldn't be -- the football game itself, the activity, is not
4 for the purpose of -- you're not doing the act so that you
5 can create or have a photograph of it. It's a
6 memorialization of an event.

7 And it would be the same if you had any major
8 event in life. A lot of people, if they get married, will
9 have photographs taken of their -- of the events at their
10 wedding. You wouldn't say, "Well, they had the wedding for
11 the purpose of creating a visual image of the wedding."

12 So if you look at the statute and what it says for
13 the purpose of producing the visual depiction, now you may
14 say to yourself, "Well, what could be some times where you
15 would have a photograph or a video or you would do an action
16 for the purpose of creating a video or photograph of that
17 event?"

18 Well, we can think, in the social media age, of a
19 lot of different things. I'll give you a couple of examples.
20 Whenever there's a movie that you go see at the movies or you
21 watch a video, that's clearly one where the actions on the
22 video are for the purposes of creating the video. Another
23 would be fashion magazines, people posing and -- in a certain
24 magazine, would be for the purpose of creating the visual
25 depiction so that you sell advertisements, things like that.

1 Another one would be maybe you wanted to -- you
2 were trying to sell a vehicle, and so you clean your car up
3 and then you take photographs of it so you can put it online
4 and try to sell it. Those would be some examples of clearly
5 a photograph -- you know, the events that are depicted being
6 for the purpose of producing a visual depiction, a video.

7 Now, this situation is different in this respect.
8 Unfortunately -- of course, not excusing the conduct;
9 nobody's here to argue anything about excusing the conduct.
10 But frankly, the facts of this case, if you look at the
11 facts, you look at the context of what was going on here,
12 this was a sexual relationship for the purpose of having --
13 the sex acts were for the purpose of having sex. And that's
14 what it is.

15 There were videos created, but that doesn't mean
16 that if -- and this would be hypothetically, but I think you
17 might be able to draw inferences from this. I think if you
18 go back and you look at the conversations that Ms. Bushong
19 and Mr. Frei had, they're talking about sex in a whole lot of
20 them, in most of them. But they also, during that time,
21 talk -- they do talk about some other things as the
22 relationship, you know, gets further down in time. It's
23 going to start out in early May and it goes to July 10th.
24 And so you have some changes as it goes on.

25 Even early on in the -- for instance, Ms. Bushong,

1 I believe it's on page 45, roundabout there, she talks about
2 where she's not wanting to go to school. And Mr. Frei
3 responds, well, he doesn't want to go to work either but he's
4 good to go. He's got to go. I think it was GTG. So they
5 discuss other things in there. They do discuss things. They
6 talk about affection.

7 And again, that's not right and there are a bunch
8 of other counts and you may very well look at the evidence.
9 For instance, the travel in interstate commerce for the
10 purposes of having sex with a minor, you may very well find
11 that the Government has met its burden of proof on those
12 facts and the elements of those counts.

13 But on these counts, you can't find that. You
14 can't -- the circumstantial evidence does not weigh in the
15 favor of the Government on those. The Judge talked about
16 circumstantial evidence, and I would say in this case
17 there's -- really, this would be a circumstantial evidence
18 case. You can't -- obviously, nobody can read anybody's
19 mind, so it always makes it difficult to figure out what
20 somebody's intent, why they do something. So when we started
21 out, we talked about the what, where, when -- who, what,
22 when, and where, and then the why.

23 And so the Government is saying, well, look at the
24 entire relationship. They took the photographs; must have
25 been for the purpose of the photographs. That's the

1 implication.

2 Now, when the Judge talked about circumstantial
3 evidence, he gave an example of if it's raining outside. And
4 circumstantial evidence would be a person walks into the
5 courtroom, they sit down there at the witness stand, they
6 have an umbrella, and it's wet. That would be circumstantial
7 evidence that the jury could draw inferences that it's
8 probably raining outside.

9 It's not always that clear-cut when it comes to
10 circumstantial evidence. I would give -- what if a person
11 came in with an umbrella and they walked in and they sat
12 there at the witness stand but it wasn't wet. So you have,
13 well, there might be a suggestion that it might be raining,
14 but this person might just carry their umbrella around
15 everywhere they go.

16 Obviously, direct evidence, the Judge said, would
17 be if somebody said, "Hey, it's raining outside," and that
18 was the testimony you heard. Well, you don't have any
19 witness obviously for direct evidence, you know. You don't
20 have any evidence that says that the sexually explicit
21 conduct, the sex acts, were for the purpose of producing a
22 photograph. You don't have any officers saying that. You
23 don't even have Ms. Bushong saying that.

24 So that leads us to the circumstantial evidence in
25 the case. And so what you have to look at in determining

1 whether the photographs and videos or the sexual conduct was
2 for the purpose of producing the visual depiction is, you
3 have to look at the entire case. You have to use your
4 commonsense reason.

5 And it's Mr. Frei's contention -- and the evidence
6 supports this -- that as improper as you find it, as morally
7 repugnant, that those sexual acts were not for the purpose of
8 producing the photos or the videos.

9 So for that reason, on Counts 1 through 4, there
10 is just not sufficient evidence. The Government has a
11 burden of proof to find each and every element of Counts 1
12 through 4 beyond a reasonable doubt. And if you go back and
13 you look at the heart emojis and all of the things in there
14 relationship-wise, and also consider the fact that these
15 Facebook messaging back and forth continued on even after the
16 sexual acts in the photographs were taken. I kind of think
17 you could also look at it in a way: If this were for the
18 purpose of creating the photographs for visual images, well,
19 that was done the first day, but the relationship continued.

20 The bottom line is, Ms. Bushong and Mr. Frei were
21 having sex for the purpose of having sex. It wasn't to
22 create a video, it wasn't to create a photograph. And so,
23 therefore, on Counts 1 through 4, I ask that you return a
24 verdict of not guilty.

25 Now, on the other counts, you may find that there

1 is sufficient evidence on those. Go back and review those
2 counts, and if you -- there very well could be counts that
3 you find that there is sufficient evidence. But on these
4 four counts, you should not -- you should render a verdict of
5 not guilty on that.

6 Ladies and gentlemen of the jury, I thank you for
7 your service. And thank you.

8 THE COURT: Thank you, Mr. Buckholts.

9 Ms. Risinger?

10 MS. RISINGER: Let me be clear: He does not have
11 to use Taylor to engage in sexual activity for the purpose --
12 for the sole purpose of producing child pornography; rather,
13 that has to be a purpose. It's not mutually exclusive. He
14 can want to have sex with her, he can enjoy the sex with her,
15 and he can also use her to engage in that sex for the purpose
16 of producing child pornography. It does not have to be a
17 sole purpose and it doesn't have to be premeditated.

18 Doesn't have to be thinking about it when he's
19 back in North Carolina, although there's evidence he was when
20 he was talking about "Can I take photos." He's asking her if
21 she's ever seen a porno, would she want him to bring a sex
22 movie for them to watch.

23 The production value of those videos, whether
24 there were big lights and camera and sexy scenes, also
25 doesn't matter. These videos and these photos weren't being

1 produced so they could end up on Pornhub; they were being
2 produced so the Defendant could go back and watch them over
3 and over and over. Circumstantial evidence that he used
4 Taylor to engage in sexually explicit activity for the
5 purpose of producing images and movies: the number of photos
6 and videos. Every image of Taylor that was taken with his
7 phone revolved around sex. The only three clothed pictures
8 recovered from his phone of Taylor were downloaded from
9 Facebook or received. Every single photo and video he took
10 with his phone, the number, the sheer number of those, 27,
11 that's circumstantial evidence.

12 The instruction he would give her during the
13 videos, you heard a little bit of it when we played one of
14 those videos for a few seconds, but you also heard
15 Detective Gish talk about what he would hear when he watched
16 and listened to the full video. You heard her tell you
17 sometimes he'd say, "Smile" in the videos. "Open your mouth.
18 We need to get you over this shyness."

19 In that video from May 17th when he pulls down her
20 nightgown and pants to her face, and she clearly hunches
21 over and puts her arms over her exposed breasts and her head
22 down, "We need to get you over that shyness," his
23 instructions.

24 How he would adjust the camera during the videos,
25 panning from one part of Taylor's body to another. That's

1 circumstantial evidence. His retention of the photos and
2 videos, the fact that he still had them when Detective Adkins
3 seized his phone on our search, you heard Detective Gish tell
4 you those weren't deleted. And we know -- we know he watched
5 them; we know he looked at them. It doesn't have to be the
6 sole purpose, just a purpose.

7 You're not missing anything. Don't overthink
8 this. Like my co-counsel, Mr. Suedekum, told you in opening,
9 the evidence in this case is overwhelming. He is guilty.
10 Find him guilty.

11 THE COURT: All right. Thank you, Ms. Risinger.

12 **(End of excerpt. Proceedings occurring after this**
13 **excerpt included in Trial Volume 3.)**

14 * * *

1 REPORTER'S CERTIFICATE

2
3 I, Deborah K. Watson, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the stenotype shorthand machine
7 the proceedings held in open court on February 14, 2019, in
8 the matter of *United States of America vs. James Frei*, Case
9 No. 3:17-cr-00032;

10 That an excerpt of proceedings in connection with
11 the hearing was reduced to typewritten form by me;

12 That the foregoing transcript (pages 1 through 29)
13 is a true and accurate record of the proceedings to the best
14 of my skills and abilities;

15 This the 1st day of September, 2020.

16
17 /s/ Deborah K. Watson
18 DEBORAH K. WATSON, RPR, CRR
19 Official Court Reporter
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